

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PHOENIX LICENSING, L.L.C. and LPL
LICENSING, L.L.C.;

Plaintiffs,

v.

ALLSTATE CORPORATION, *et al.*;

Defendants.

Civil Action No. 2:09-CV-255-TJW

Jury Trial Demanded

**JOINDER BY BANK OF AMERICA DEFENDANTS IN
BARCLAYS DEFENDANTS' 12(b)(6) MOTION TO DISMISS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants Bank of America Corporation, Bank of America, N.A., and FIA Card Services, N.A. (collectively "Bank of America") hereby join in Defendants Barclays Bank Delaware and Barclays Bank PLC's (collectively "Barclays") 12(b)(6) Motion to Dismiss filed with the Court on October 21, 2009. (Doc. 95.)

The arguments for dismissal of the Complaint set out by Barclays apply, mutatis mutandis, to Bank of America. As amply explained by Barclays, the Plaintiffs' Complaint should be dismissed because it fails to meet the threshold pleading standards as set forth by Fed. R. Civ. P. 8 and the Supreme Court. Plaintiffs have failed to make the requisite "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8; *Doe v. Myspace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) (quoting *Hughes v. The Tobacco Inst., Inc.*, 278 F.3d 417, 420 (5th Cir. 2001)). This

short and plain statement of the claim must include factual allegations concerning all material elements of some viable theory of recovery in order to satisfy the requirements of Fed. R. Civ. P. 8(a). *In re Plywood Antitrust Litig.*, 655 F.2d 627, 641 (5th Cir. 1981). Since the Complaint does not plead any facts and only provides a formulaic recitation of the elements of patent infringement, the Complaint should be dismissed under Fed. R. Civ. P. 12(b)(6). *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

For these reasons, and for the reasons advanced by Barclays applied mutatis mutandis to Bank of America, Bank of America respectfully requests that the Court dismiss the instant Complaint with prejudice and award Bank of America their costs, expenses, and attorneys' fees incurred in defense of this Complaint.

DATE: October 26, 2009

Respectfully Submitted,

/s/ William C. Rookridge
William C. Rookridge — Lead Attorney
California State Bar No. 134483
HOWREY, LLP
4 Park Plaza, Suite 1700
Irvine, CA 92614-8557
Tel: 949.721.6900
Fax: 949.721.6910
Email: rooklidgew@howrey.com

Gary J. Fischman
TX State Bar No. 00787469
HOWREY, LLP
1111 Louisiana St., 25th Floor
Houston, TX 77002
Tel: 713.787.1400
Fax: 713.787.1440
Email: fischmang@howrey.com

Attorneys for Defendants
BANK OF AMERICA CORPORATION,
BANK OF AMERICA, N.A. and FIA CARD
SERVICES, N.A.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on October 26, 2009 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ William C. Rooklidge
William C. Rooklidge